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United Nations

Committee of Experts on International Cooperation in Tax Matters

Report on the sixteenth session (14–17 May 2018)

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Note

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Contents

Chapter		*Page*
I.	Introduction	4
II.	Organization of the session	5
III.	Discussion and conclusions on substantive issues related to international cooperation in tax matters	6
	A. Procedural issues for the Committee	6
	B. Tax consequences of the digitalized economy — issues of relevance for developing countries	6
	C. Environmental tax issues	7
	D. Possible update of the United Nations Practical Manual on Transfer Pricing for Developing Countries	8
	E. Update of the handbook on extractive industries taxation issues for developing countries	9
	F. Taxation of development projects	10
	G. Treatment of collective investment vehicles	11
	H. Dispute avoidance and resolution	13
	I. Capacity-building	15
	J. Update of the United Nations Manual for the Negotiation of Bilateral Tax Treaties between Developed and Developing Countries	16
	K. Issues related to the update of the United Nations Model Double Taxation Convention between Developed and Developing Countries	18
	L. Other matters	20
IV.	Matters calling for action by the Economic and Social Council	21
	Draft decision recommended for adoption by the Council: Venue and dates of and provisional agenda for the seventeenth session of the Committee	21

Chapter I
Introduction

1. Pursuant to Economic and Social Council resolution 2004/69 and decision 2018/205, the sixteenth session of the Committee of Experts on International Cooperation in Tax Matters was held in New York from 14 to 17 May 2018.

2. The sixteenth session of the Committee was attended by 23 Committee members and 74 observers.

3. The provisional agenda and documentation for the sixteenth session, as adopted by the Committee (E/C.18/2018/2), was as follows:

1. Opening of the session by the representative of the Secretary-General.
2. Adoption of the agenda and organization of work.
3. Discussion of substantive issues related to international cooperation in tax matters:
   - (a) Procedural issues for the Committee;
   - (b) Report of the Subcommittee on Updating the United Nations Model Double Taxation Convention between Developed and Developing Countries;
   - (c) Other issues:
     - (i) Update of the United Nations Practical Manual on Transfer Pricing for Developing Countries;
     - (ii) Update of the handbook on extractive industries taxation issues for developing countries;
     - (iii) Update of the Manual for the Negotiation of Bilateral Tax Treaties between Developed and Developing Countries;
     - (iv) Treatment of collective investment vehicles;
     - (v) Dispute avoidance and resolution;
     - (vi) Capacity-building;
     - (vii) Environmental tax issues;
     - (viii) Tax consequences of the digitalized economy — issues of relevance for developing countries;
     - (ix) Taxation of development projects;
     - (x) Other matters for consideration.
4. Provisional agenda for the seventeenth session of the Committee.
5. Adoption of the report of the Committee on its sixteenth session.

Chapter II
Organization of the session

Opening of the sixteenth session and adoption of the agenda

4. On 14 May 2018, the sixteenth session of the Committee of Experts on International Cooperation in Tax Matters (the Committee) was opened on behalf of the Secretary-General by Navid Hanif, Director of the Financing for Sustainable Development Office of the Department of Economic and Social Affairs of the Secretariat.

5. The Director's opening remarks focused on three aspects of the Committee's work: the key role of taxation in the implementation of the 2030 Agenda for Sustainable Development; strengthening international cooperation in tax matters, including through the work of the Committee; and building capacity for more effective and efficient tax systems and administrations. He noted that financing was key for the realization of the 2030 Agenda, which was the main priority for all, and that the Addis Ababa Action Agenda provided a global framework for that purpose. The Director reviewed the most recent work and achievements of the Committee in that context.

6. One of the most recent achievements cited by the Director was the United Nations Handbook on Selected Issues for Taxation of the Extractive Industries by Developing Countries, which was launched during the sixteenth session of the Committee. The Handbook would be a useful tool that would help countries endowed with natural resources to collect needed revenue to finance sustainable development. The Director also stressed the importance of the Committee's work as a linchpin for the capacity-building activities that the Financing for Sustainable Development Office had been conducting through seminars and workshops in Africa, Latin America and Asia, in addition to a number of published manuals and courses. Such activities had benefited from the Office's collaboration with organizations such as the Organization for Economic Cooperation and Development (OECD) and other regional organizations on the African and American continents.

7. The Director discussed the participation of the Financing for Sustainable Development Office in the Platform for Collaboration on Tax, a joint initiative of the International Monetary Fund (IMF), OECD, the United Nations and the World Bank. The Platform had developed a number of tools to support developing countries in their fight against tax evasion and tax avoidance. That work focused on tax treaties, transfer pricing, tax incentives and other policy measures such as national medium-term revenue strategies. The first global conference of the Platform was organized in February 2018 in New York and discussed two main issues: the role of taxation in mobilizing domestic resources to finance the Sustainable Development Goals and the challenges and opportunities of using tax systems in support of sustainable development.

8. The Director noted the important work that the Committee had planned for its current term and offered his perspective on how best to ensure that such work contributed to the domestic resource mobilization efforts needed for financing sustainable development. Finally, he pledged the support of the Financing for Sustainable Development Office for the work of the Committee and referred to the creation of the International Tax and Development Cooperation Branch, which brought together the secretariat of the Committee and the Capacity Development Unit. He also announced that one additional member of the secretariat would support the work of the Committee.

Chapter III
Discussion and conclusions on substantive issues related to international cooperation in tax matters

A. Procedural issues for the Committee

9. In a closed session, the Coordinator of the Subcommittee on United Nations Tax Committee Practices and Procedures, Stephanie Smith, presented a conference room paper on procedural issues for the Committee based on the rules of procedure of the Economic and Social Council, discussions at the fifteenth session and the rules and practices established during previous Committee sessions.

10. The Committee then discussed procedural issues on the basis of that paper. Issues that were either discussed at the meeting or identified for discussion at a subsequent meeting related to: meeting agendas; the reports of the Committee; the creation, composition and termination of subcommittees; the elections of Chairs and Vice-Chairs; the short-term and long-term aspects of the conduct of business; and the reporting of minority views in the commentary on the United Nations Model Double Taxation Convention between Developed and Developing Countries. It was agreed that the Subcommittee would continue its work on the basis of the comments made by the Committee during the session, the rules of procedure of the Economic and Social Council and the ad hoc rules and practices established during previous Committee sessions.

11. In an open session that also dealt with procedural issues, the Director of the Financing for Sustainable Development Office indicated that he would personally meet with all members in order to seek their input as to how to improve the Committee's work and relevance. He also invited members and country observers to respond to a questionnaire on the organizational aspects of the session. In addition, he proposed measures that would make it possible to hold subcommittee meetings back-to-back with the sessions of the Committee in order to improve efficiency. Several members expressed their appreciation for those initiatives. It was also noted that subcommittees, depending on their specific needs, might need to hold additional meetings between sessions.

B. Tax consequences of the digitalized economy — issues of relevance for developing countries

12. The Committee first discussed whether the question of the use of digital technologies by tax administrations should remain in the mandate of the Subcommittee on Tax Challenges Related to the Digitalization of the Economy or whether work on that topic should be assigned to a new subcommittee or be postponed. After discussion, it was agreed that, while the question was important and should remain on the Committee's programme of work, it should be dealt with at a later stage as the Committee determined, and should not be included in the mandate of the Subcommittee. The mandate of the Subcommittee on Tax Challenges Related to the Digitalization of the Economy was therefore modified to read as follows:

The Subcommittee is mandated to draw upon its own experience as a body widely representative of affected stakeholders and engage with other relevant bodies and interested parties with a view to:

(a) Analysing technical, economic and other relevant issues;

(b) Describing difficulties and opportunities especially of interest to the various affected agencies of developing countries;

(c) Monitoring international developments;

(d) Describing possible ways forward;

(e) Suggesting measures and drafting provisions related to the digitalization of the economy, with regard to:

(i) Income taxes;

(ii) Double tax treaties;

(iii) Value added tax as well as other indirect taxes.

13. After a presentation by Aart Roelofsen, Co-Coordinator of the Subcommittee, on the work done on tax issues related to the digitalization of the economy at OECD and in the European Union, the Committee discussed how to take into account the work carried out in those other forums. The Committee recognized the importance of the work in progress by other organizations and as a potential input to its own work, and vice versa. It was agreed to start working on issues that were most important to developing countries, while taking stock of work done by others. The Co-Coordinators agreed to produce a paper on the work done by other organizations that included a proposal for a work programme to take the topic forward.

C. Environmental tax issues

14. The topic was presented by Natalia Aristizabal Mora, Coordinator of the Subcommittee on Environmental Taxation Issues, who first noted that the Subcommittee's current membership included members of the Committee and observers from civil society and the private sector.

15. She reported on the Subcommittee's meeting in Brussels on 5 and 6 March 2018, which was hosted by the European Commission. The Subcommittee reviewed its mandate and began developing a proposed programme of work. The meeting focused on environmental taxation issues faced by countries, in particular developing countries, and examined the experience of a few countries in the area of policy design and implementation. The Subcommittee proposed that its work first focus on carbon taxation issues while keeping other aspects of environmental taxation in its work programme. An outline of proposed guidelines on carbon taxation was being drafted but was still at an early stage of development.

16. Addressing the issue of carbon taxation, the Coordinator explained that the Subcommittee considered carbon taxes to be potentially very important to tax systems and sustainable development, especially for developing countries. Carbon and environmental taxes were now on the agenda of many developing countries, not only for revenue purposes but also for the purpose of meeting those countries' commitments regarding climate change. The taxes figured prominently in the Addis Ababa Action Agenda and had a key role to play in achieving the Sustainable Development Goals.

17. The Subcommittee found some examples of countries that had adopted carbon taxes and had been very successful in reducing carbon emissions while raising public revenue. In addition to the examples provided by some developed countries, which were presented at the meeting in Brussels, the Subcommittee intended to look at the experiences of developing countries such as Argentina, Chile, Colombia, Costa Rica, the Philippines and South Africa.

18. The Coordinator added that carbon taxes could be particularly beneficial for developing countries because, depending on the way they were implemented, they

could be easily administered and collected using the infrastructures that already existed in those countries.

19. The Subcommittee sought guidance and the approval of the Committee for its proposed programme of work. As previously mentioned, the proposal was to focus first on carbon taxation, but the Subcommittee also sought guidance on other issues covered by its mandate that could require its immediate attention.

20. The participants who took the floor expressed their satisfaction with the work programme developed by the Subcommittee and stressed the importance of the topic for both developed and developing countries. There was some discussion as to whether the work should focus on practical guidance or whether a theoretical framework concerning environmental taxation should be developed. Other interventions included a proposal to address the issue of tax incentives aimed at behavioural changes and dealt with challenges that developing countries might face when trying to implement carbon taxes. Committee members also referred to the issue of how to use the revenues collected through environmental taxes.

21. The Committee endorsed the Subcommittee's decision to focus primarily on carbon taxation while keeping an eye on other matters, including such internal Subcommittee research and work as was necessary. It also approved the proposed programme of work presented by the Coordinator

D. Possible update of the United Nations Practical Manual on Transfer Pricing for Developing Countries

22. The Co-Coordinators of the Subcommittee on Article 9 (Associated Enterprises): Transfer Pricing, Stig Sollund and Ingela Willfors, first reported on the progress made by the Subcommittee since its most recent meeting and on the next steps planned for the Subcommittee. They indicated that, since October 2017, there had been two short but productive meetings of the Subcommittee in New York, one in February and the other before the sixteenth session of the Committee. They added that the United Nations Practical Manual on Transfer Pricing for Developing Countries was being used in the context of the capacity-building activities of the United Nations and the African Tax Administration Forum and that a number of practical issues related to transfer pricing had been raised by African countries.

23. The purpose of the second meeting of the Subcommittee was to undertake substantive work to decide on priority issues and to start drafting an update of the Manual. The Subcommittee understood the importance of practical guidance and was of the view that adding more examples relevant to the circumstances of developing countries would be a good start.

24. The size of the Manual was mentioned and the Subcommittee recognized the need to eliminate repetition across chapters so that new topics could be added without increasing the current size of the Manual. It was noted, however, that the current work was not primarily aimed at adding new areas of policy guidance.

25. The Co-Coordinators also discussed the new topics to be addressed in the Manual. First, new guidance on financial transactions was to be added, as many participants in the capacity-building workshops had expressed the wish to have basic background and guidance on ways to deal with financial transactions such as loans and guaranties.

26. That work would proceed in parallel with the work on financial transactions carried out by the OECD Inclusive Framework on Base Erosion and Profit Shifting, in follow-up to the OECD Action Plan on Base Erosion and Profit Shifting. A

subgroup of the Subcommittee was preparing a discussion draft on that topic. In addition, the treatment of procurement functions was another area that would be addressed.

27. Additional work and guidance were also expected with respect to transactional profit split methods, drawing in particular on expected OECD guidance on that topic. The lack of comparables remained a challenge for many developing countries but the Platform for Collaboration on Tax had developed a very good and informative toolkit on the subject which could be suitably referenced in the Manual. Additional issues such as safe harbours and marketing intangibles would also require attention.

28. All of those issues were among the priorities of the Subcommittee and would be discussed at its next meeting, which was to be held in Quito from 2 to 4 October 2018. The Government of Ecuador was thanked for having proposed to host that meeting.

29. Finally, the Co-Coordinators invited all stakeholders to send comments and identify areas of interest that were within the mandate of the Subcommittee by 10 September 2018. That invitation would be added to the Committee's website. At the October session, the Subcommittee expected to have a more detailed workplan. It was also expected that a final draft update of the Manual would be presented at the Committee's session in October 2020, or at the latest at the session of the Committee to be held in the second quarter of 2021.

30. The participants who took the floor stressed the importance of the Subcommittee's work, and the Committee approved the proposed workplan of the Subcommittee.

E. Update of the handbook on extractive industries taxation issues for developing countries

31. The Coordinator of the Subcommittee on Extractive Industries Taxation Issues for Developing Countries, Eric Mensah, provided an overview of the mandate and composition of the Subcommittee, which was established during the fifteenth session of the Committee. While the Subcommittee included individuals with proven expertise in the area, the Coordinator called for more participants from developing countries, including Committee members.

32. The Coordinator indicated that the next Subcommittee meeting would be held in Madrid on 20 and 21 June 2018. The agenda for that meeting included: (a) the review of the United Nations Handbook on Selected Issues for Taxation of the Extractive Industries by Developing Countries, particularly with regard to the relevance for developing countries of the guidance included therein; and (b) the future update of the Handbook to include additional areas of priority for developing countries, such as practical guidance on auditing mining and oil and gas activities, trade mispricing issues (to the extent that they were not transfer pricing issues), the tax treatment of service providers and subcontractors, the tax treatment of financial transactions related to extractive industries, environmental tax issues and tax incentives. Where appropriate, those issues might be analysed in coordination with other relevant Subcommittees.

33. The Coordinator then launched the United Nations Handbook on Selected Issues for Taxation of the Extractive Industries by Developing Countries, developed by the Subcommittee that had been mandated by the previous Committee membership to work in the area of extractive industries. Michael Lennard, from the secretariat, briefly outlined the structure of the Handbook and provided an overview of its nine chapters. He also observed that the Handbook was the result of the work of multiple stakeholders and of the fruitful collaboration between different subcommittees.

34. The Handbook covers the following topics, which were presented by the secretariat and relevant contributors in the order of the chapters of the Handbook: (a) overview of the structure of the Handbook, and background on the relevance of selected issues for developing countries; (b) tax treaty issues related to extractive industries and related challenges arising from domestic and international taxation; (c) issues related to permanent establishment and the application of that concept in relation to the taxation of extractive industries; (d) indirect transfer of assets, which is a crucial issue for developing countries (addressing in particular issues related to the taxation of capital gains deriving from the sale of foreign assets); (e) transfer pricing issues in the extractive industries (the chapter, developed in cooperation with the Subcommittee on Article 9 (Associated Enterprises): Transfer Pricing, describes potential issues arising at different stages of the value-chain and suggests approaches to address them); (f) the tax treatment of decommissioning, including the structure of cost deductions and how that may affect business decisions; (g) the government's fiscal take, which describes the types and characteristics of compensations resulting from the development of natural resources; (h) tax aspects of the negotiation and renegotiation of contracts; and (i) issues related to value added tax, including policy and administration issues.

F. Taxation of development projects

35. Jacques Sasseville, from the secretariat, introduced the topic on the taxation of development problems by reminding the Committee that the issue had been on the agenda of the Committee since its first session in 2005. On the basis of the conference room paper on revising the draft guidelines on the tax treatment of official development assistance (ODA) projects,[1] he summarized the work previously done and observed that the issue of the tax treatment of ODA projects was now attracting more attention in the context of efforts to increase domestic resource mobilization in order to achieve the Sustainable Development Goals. He also noted the commitment included in the Addis Ababa Action Agenda to consider not requesting tax exemptions on goods and services delivered as government-to-government aid, beginning with announcing repayments of value-added taxes and import levies.

36. Mr. Sasseville then explained that, at the fifteenth session of the Committee held in October 2017, a number of members and observers had stressed the importance of addressing the issue, and the Committee had decided that the next step would be to prepare a paper for discussion at the sixteenth session of the Committee. On the basis of that decision, the secretariat prepared an annotated version of the 2007 draft guidelines, which was first discussed at an informal meeting that took place on 12 February 2018 in the margins of the first global conference of the Platform for Collaboration on Tax, entitled "Taxation and the Sustainable Development Goals", held at United Nations Headquarters from 14 to 16 February 2018. The issue of the tax treatment of ODA projects was also raised during the conference itself and the statement by the partners of the Platform released at the closing of the conference indicated that the Platform's partners (IMF, OECD, the United Nations and the World Bank) intended to review current practice, and provide guidance and recommendations, on the tax treatment of ODA-funded goods and services. Mr. Sasseville concluded his presentation by indicating that the next step suggested in the conference room paper was to invite all interested parties to submit written comments with a view to preparing a revised version of the draft guidelines for

[1] See E/C.18/2018/CRP.5. Available at www.un.org/esa/ffd/wp-content/uploads/2018/05/16STM_CRP5_ODA-Projects.pdf.

discussion at the seventeenth session of the Committee, to be held from 16 to 19 October 2018.

37. One Committee member observed, however, that the present membership of the Committee had not yet taken a decision as to whether the issue should be addressed, and that one approach could be to simply leave the issue to the Platform for Collaboration on Tax, which was doing its own work on the topic.

38. Other members stressed the importance of the issue but requested more time to examine the annotated version of the 2007 draft guidelines before considering possible next steps.

39. A representative from the Overseas Development Institute noted that the tax treatment of ODA projects was an important issue for developing countries. He indicated that the Institute had just released a paper on the issue and suggested that the Development Assistance Committee of OECD could also play a useful role in that area.

40. One member of the Committee expressed concerns about the part of the 2007 draft guidelines dealing with the income taxation of services performed in a partner country, suggesting that if work was carried out in a country, the remuneration for that work should be taxed in that country. Another member supported that view. It was noted, however, that the main object of the guidelines was to reflect internationally agreed standards concerning residence-source taxing rights and that in some limited cases, such as when services are performed by employees of a foreign State, it was generally agreed that the remuneration should not be taxed in the State where the services were performed. A question was also asked concerning the practice of the World Bank in that area, and the observer from the World Bank agreed to try to get more information on the subject.

41. The Chair indicated that the next step would be for all interested parties to send written comments to the secretariat, before 31 July 2018, on the annotated version of the draft guidelines and on the issue of whether the Committee should continue its work in that area.

42. One Committee member mentioned the proposal made by some members at the fifteenth session of the Committee that a subcommittee be set up to carry out follow-up work in that area. The Chair responded that, before it discussed whether a subcommittee should be set up, the Committee needed to endorse the proposal to continue the work on the revision of the 2007 draft guidelines. Stressing again the importance of the issue for developing countries, the same member expressed the wish that a subcommittee on the tax treatment of ODA projects could be set up at the session of the Committee to be held in October 2018.

G. Treatment of collective investment vehicles

43. Christoph Schelling (Switzerland), introduced the topic by summarizing the contents of a conference room paper on the treatment of collective investment vehicles.[2] He noted that the United Nations Model Double Taxation Convention between Developed and Developing Countries did not include anything specific on the application of its provisions to collective investment vehicles. The main treaty issues that could be addressed related to the treaty characterization and treaty entitlement of such vehicles, which related to the treaty concepts of person, resident of a Contracting State and beneficial owner as well as to questions related to the

[2] See E/C.18/2018/CRP.7. Available at www.un.org/esa/ffd/wp-content/uploads/2018/05/16STM_CRP7_Collective-Investment-Vehicles.pdf.

significance of the State in which such a vehicle was established, provisions dealing with equivalent beneficiaries, the possibility for such a vehicle to claim treaty benefits on its own behalf or on behalf of its investors, issues related to pension funds and issues related to publicly traded collective investment vehicles.

44. Noting the financial importance of investments made through collective investment vehicles for developed and developing countries, Mr. Schelling suggested that those issues should be addressed in order to provide greater certainty in developing countries that wished to benefit from such an important source of portfolio investment. Referring to the work previously done in that area by OECD, he stressed the importance and the number of the issues that could be addressed.

45. All of the members' statements that followed stressed the importance of the topic. During those interventions, members also suggested that the following specific issues be addressed as part of the work in that area:

(a) The application to collective investment vehicles of the limitation-on-benefits provisions of article 29 of the United Nations Model Convention (this suggestion was supported by another member);

(b) The application of tax treaties to "non-collective investment vehicles" (another member expressed some reservations about addressing that issue given the difficulty of dealing with the wide scope of non-collective investment vehicles and identifying the ultimate investors);

(c) The practical application of treaty benefits to collective investment vehicles (reference was made to the OECD Treaty Relief and Compliance Enhancement (TRACE) project and another member supported addressing that issue).

46. One member requested additional information on the organization and exact scope of the work that the Committee was invited to undertake in relation to collective investment vehicles. It was observed that the initial idea was to have that work done by the Subcommittee on Updating the United Nations Model Double Taxation Convention between Developed and Developing Countries. The Chair asked members if they agreed with that approach and it was so agreed.

47. One member requested more information on the importance of collective investment vehicles in developing countries and specific sectors, including the extractive industry. Mr. Schelling undertook to try to find that information, suggesting that all countries were likely affected by collective investment vehicles, notably with regard to pension funds. A country observer asked whether the previous work of OECD on collective investment vehicles had had any impact on developing countries. The observer from the International Bureau of Fiscal Documentation referred to the work that had been done on issues related to collective investment vehicles in preparation for an upcoming International Fiscal Association conference, which could provide useful background information. He also suggested that work in that area could also address the treaty treatment of the remuneration of fund managers.

48. The Chair concluded the discussion by indicating that further work on the issue should be carried out under the umbrella of the Subcommittee on Updating the United Nations Model Convention. Suggesting that Mr. Schelling could join that Subcommittee, the Chair indicated that the Subcommittee would need to decide on the priorities and organization of its work in relation to the next update and would therefore need to bring the issue to the attention of the Committee at its seventeenth session in October 2018.

H. Dispute avoidance and resolution

49. The Co-Coordinators of the Subcommittee on Dispute Avoidance and Resolution, George Omondi Obell and Cezary Krysiak, presented the work done by the Subcommittee since the previous meeting of the Committee. The Subcommittee met in January 2018 in Mexico City (PRODECON, the Mexican tax ombudsman's office, was thanked for the efficient organization of that meeting) and its work focused on advancing the different chapters of the draft United Nations handbook on dispute avoidance and resolution, the main outcome expected from the Subcommittee's work. It was recognized that chapter three (dealing with domestic procedures for the resolution of disputes) and chapter five (dealing with the mutual agreement procedure) of the handbook dealt with the most important issues to be addressed. In relation to chapter three, reference was made to the useful role that might be played by a tax ombudsman, and the positive experience of Mexico in that area was noted.

50. The secretariat indicated that the purpose of the discussion was to seek the input of the Committee and of the observers on the draft contents of the handbook with a view to prioritizing further work. Some of the chapters of the handbook were then introduced:

(a) **Chapter one: introduction and overview**. The chapter would provide a general background and stress the importance of resolving disputes as part of developing a good investment climate. It was noted that the handbook was intended to provide guidance to countries that had no or little experience with the mutual agreement procedure and to assist them in complying with their obligations in that area. The chapter would address some of the reasons for the existing uncertainty in the area of taxation and suggest ways to increase certainty in how disputes should be resolved;

(b) **Chapter two: dispute avoidance mechanisms**. The chapter would address mechanisms to help minimize tax disputes (e.g., cooperative relationship programmes, advance pricing agreements and joint or simultaneous audits). Members of the Committee were asked for their views as to the contents of that chapter and whether it should be merged with chapter one;

(c) **Chapter three: disputes resolution: domestic procedures**. A first draft of the chapter was presented by Edson Uribe Guerrero, Deputy Chair of PRODECON. The chapter would discuss how to effectively manage the domestic issues arising from the tax audit and describe administrative appeals and litigation processes. It would also deal with the role of a tax ombudsman, tax settlements, procedures for alternative dispute resolutions and other relevant topics. With regard to the role of a tax ombudsman, the chapter would describe the different models used in various countries and underline the importance of the role that might be played by a tax ombudsman in avoiding and solving domestic tax disputes;

(d) **Chapter four: special issues faced by developing countries**. After the secretariat stressed the importance of identifying which issues related to mutual agreement procedures were important for countries at various stages of development, so as to determine what areas should be addressed in the chapter, Norbert Roller, from the World Bank, presented the first draft of that chapter, which addressed various issues experienced by developing countries (e.g., interference with domestic law and lack of capacity). The chapter would seek to illustrate the issues through case studies and, for that purpose, Committee members and other stakeholders were invited to contribute case studies involving dispute resolution in developing countries. Responding to a member who stressed the need to maintain the confidentiality of mutual agreement procedures and domestic tax cases, Mr. Roller and the secretariat

clarified that it was not necessary to disclose the identity of the country or of the taxpayers involved since the purpose of the exercise was to develop fictional case studies based on what happened in practice;

(e) **Chapter five: mutual agreement procedure**. The secretariat explained that the mandate of the Subcommittee asked for the production of a handbook on dispute avoidance and resolution and the updating of the guide to the mutual agreement procedure published in 2012. The guide presents best practices in the actual conduct of a mutual agreement procedure case, whereas the handbook was intended to be an introductory guide to the wider topic of dispute avoidance and resolution. However, the Subcommittee was of the opinion that chapter 5 should be made up partly or entirely of the guide to the mutual agreement procedure, which would still continue to exist as a separate document, so as to prevent duplication and avoid possible conflicting guidance. Alvaro de Juan Ledesma, a business member of the Subcommittee, explained that the aim of the chapter would be to explain the mutual agreement procedure process to countries and taxpayers with less experience in that area and then explained some of the features of that process;

(f) **Chapter six: non-binding dispute resolution**. The chapter would deal with the advantages and disadvantages of non-binding dispute resolution mechanisms. Cym Lowell, a business member of the Subcommittee, explained that the chapter would focus primarily on the expert determination and mediation mechanisms. The chapter would examine how those mechanisms were used in non-tax disputes and present their pros and cons;

(g) **Chapter seven: mandatory dispute settlement**. The secretariat indicated that the inclusion of the chapter, which would deal with the arbitration process, reflected the fact that the topic was expressly included in the Subcommittee's mandate. It stressed, however, the importance of recognizing that there were different views among countries concerning the appropriateness of using arbitration in tax matters. The chapter should therefore provide the information necessary for countries to make an informed decision on the matter without favouring any views. Sriram Govind, an academic member of the Subcommittee, explained that the chapter would analyse the various forms of arbitration described in the United Nations and OECD models, the regional and country experiences with the process, the pros and cons of arbitration, various aspects of the process itself and capacity development issues; it would also include case studies and alternative procedural guidelines on how the process could be set up;

(h) **Other chapters**. The secretariat raised the possibility of adding a separate chapter dealing with disputes on tax matters arising under the provisions of non-tax instruments, such as investment treaties and the General Agreement on Trade in Services. It added that many investment treaties included provisions dealing expressly with tax matters and that people were often not aware of the importance and effect of such provisions. It also referred to the alternative provision on dispute resolution that was found in the commentaries of the OECD Model Tax Convention on Income and on Capital and the United Nations Model Convention. The observer from OECD referred to the 1995 report produced by OECD on the issue of disputes on tax matters arising under the provisions of non-tax instruments, and indicated that OECD was currently working on the matter and would be willing to cooperate with the Committee in that area. A representative from the private sector stressed the importance of the issue and the need for officials involved in the negotiation of trade/investment agreements to be aware of the provisions that had been designed to address the relationship between the agreements and tax rules. The majority of the members who spoke on the issue recognized its importance, but many of them suggested that it might be more appropriate to address the issue in the United Nations Model Convention. Other members were of the view that a document presenting the

issue in more detail was needed before any decision could be taken. It was agreed that the form of any guidance that could be provided in that area could be decided later.

51. The subsequent discussion focused on the prioritization of the work on the different chapters of the handbook. Mr. Krysiak proposed to focus the efforts of the Subcommittee on chapter five, "Mutual agreement procedure" in order to have a substantive discussion of the matter at the next meeting of the Committee. Several members of the Committee pointed out that priority should also be given to chapters three and four because they constituted the basis for the implementation of a mutual agreement procedure, especially in developing countries. A member emphasized the need to include case studies in those chapters in order to provide practical guidance. Mr. Roller proposed to merge chapters four and five since those chapters dealt with the same topic. That proposal was supported by several members of the Committee.

52. Mr. Krysiak drew attention to the need for capacity development concerning the mutual agreement procedure. He suggested that the topic be added to the agenda of the next meeting of the Subcommittee, which would take place in July 2018.

53. The Committee also discussed how the minimum standards of action 14 of the Action Plan on Base Erosion and Profit Shifting should be addressed in the handbook. The secretariat suggested that some guidelines should be provided on their implementation and, at the same time, attention should be drawn to the fact that several countries had not committed to adopting those standards. Mr. Krysiak argued that the handbook was not intended to provide any policy recommendation but should merely describe the available options and their consequences. The observer from the International Bureau of Fiscal Documents suggested that the handbook could describe what the minimum standards were and explain the position of the countries that were not part of the Inclusive Framework on Base Erosion and Profit Shifting and the options available to those countries.

54. In the light of the discussion, the Committee decided to merge chapters four and five and to include the contents of the guide to the mutual agreement procedure in chapter five. It decided that the work of the Subcommittee should first focus on bringing those chapters to the Committee for consideration. The work on other chapters could also be pursued, but not at the same pace. It was also decided that the handbook should be referred to as the "handbook on dispute avoidance and resolution" (as opposed to having the reference to "resolution" appear before "avoidance").

I. Capacity-building

55. Mr. Sasseville, Harry Tonino, Irving Ojeda Alvarez and Elena Belletti from the Secretariat reported on progress made in implementing and further developing the United Nations capacity development programme in international tax cooperation. Following a brief overview of the main objectives and key features of the programme, Mr. Tonino recalled the four main areas of work, namely: (a) the dissemination of the outputs of the Committee through courses and other training activities; (b) the development of publications and other capacity development materials; (c) the delivery of country-level technical cooperation projects; and (d) the development of online training. He then elaborated on the following elements: (a) synergies with the work of the Committee; (b) opportunities to further increase the interaction between policy work and capacity development activities; and (c) partnerships with international and regional organizations and academic institutions. Mr. Tonino also provided an update of the work carried out in the context of the Platform for Collaboration on Tax, a joint initiative of IMF, OECD, the United Nations and the World Bank aimed at strengthening their cooperation and capacity-building support

to developing countries in tax matters. He reported on the outcome of the first global conference of the Platform, held at United Nations Headquarters from 14 to 16 February 2018, on the theme "Taxation and the Sustainable Development Goals", and on progress made in creating toolkits to help developing countries address international tax evasion and avoidance and in assisting those countries with implementing medium-term revenue strategies to increase their potential for domestic resource mobilization.

56. Ms. Ojeda Alvarez provided an overview of activities delivered in Latin America and the Caribbean since the previous session of the Committee, which included workshops and technical cooperation projects in the Dominican Republic, Paraguay and Trinidad and Tobago. She also presented a publication entitled "Design and assessment of tax incentives in developing countries: selected issues and a country experience",[3] which was developed in collaboration with the Inter-American Center of Tax Administrations. Mr. Sasseville reported on activities implemented in Asia, namely: (a) a series of training on double tax treaties carried out in Mongolia, in cooperation with the Strengthening Extractive Sector Management in Mongolia (SESMIM) project, an initiative supported by the Government of Canada; and (b) a workshop on tax treaty policy held in Indonesia, in cooperation with OECD. Ms. Belletti reported on a number of capacity-building initiatives implemented in Africa, which included: (a) a technical cooperation project on the negotiation and administration of double tax treaties delivered in Angola; (b) a workshop on practical issues in protecting the tax base of developing countries held in Addis Ababa, in cooperation with the Economic Commission for Africa and with the financial support of the Government of Italy; and (c) a course on transfer pricing organized in Eswatini, in cooperation with the African Tax Administration Forum. A tentative programme of work for the period from June 2018 until the next session of the Committee was also presented.

57. During the ensuing discussion, a number of members commended the work done in the context of the United Nations capacity development programme in international tax cooperation, and the Financing for Sustainable Development Office was encouraged to continue and expand that work. In response to a question by a Committee member who asked about the procedures in place to assess the impact of such activities, the Secretariat explained the monitoring and evaluation procedures and the result-based assessment tools normally used for that purpose. It was also noted that mechanisms were in place to distil lessons learned from previous activities and incorporate them into the design and planning of further activities.

J. Update of the United Nations Manual for the Negotiation of Bilateral Tax Treaties between Developed and Developing Countries

58. Patricia Mongkhonvanit, Coordinator of the Subcommittee on Tax Treaty Negotiation, recalled the history of the Manual for the Negotiation of Bilateral Tax Treaties between Developed and Developing Countries and the decision, made at the fifteenth session of the Committee in October 2017, that it should be revised, in particular to take into account changes to the United Nations Model Convention made in 2017. The Subcommittee set up for that purpose was given the mandate to revise the Manual, with a view to its adoption in 2019, on the basis of the following principles:

[3] Available at www.un.org/esa/ffd/wp-content/uploads/2018/02/tax-incentives_eng.pdf.

(a) That it reflect the current version of the United Nations Model Double Taxation Convention between Developed and Developing Countries and the relevant United Nations commentaries as well as ongoing decisions of the Committee leading to changes in them;

(b) That it pay special attention to the experience of developing countries and reflect their realities and needs at their relevant stages of capacity development;

(c) That it draw upon and feed into, as appropriate, the relevant work done in other forums, especially the work on the toolkit on tax treaty negotiation by the Platform for Collaboration on Tax.

59. In accordance with that mandate, the Subcommittee prepared a conference room paper containing a rough draft of the revised Manual.[4] While members of the Committee and all interested parties were invited to send written comments on the rough draft by 15 June 2018, the Committee was invited, during the meeting, to provide guidance on five specific questions that were included in the rough draft and on which members of the Subcommittee had expressed different views. The following text summarizes those questions and the guidance provided by the Committee:

(a) Whether the sentence "The tax administration should be informed of the existence and contents of the treaty through an explanatory note", which was currently included in the Manual, should be replaced by a recommendation that tax administrations be involved in treaty negotiations. The members who spoke on that issue generally stressed the importance of involving the tax administration during the negotiation of a tax treaty. Describing their experiences in their own countries, many members indicated that the tax administration either led tax treaty negotiations or participated in the negotiation meetings. It was therefore agreed that the sentence, which appeared under the section "After entry into force", should be removed from that section and replaced by a sentence that expressed the need to inform taxpayers and all interested parties of the existence and contents of a tax treaty. It was also agreed that the participation of the tax administration in treaty negotiations (at least in the form of pre-negotiation consultation) should be presented as a best practice but that it would also be important to acknowledge that countries might follow different approaches because of specific constraints (e.g., constitutional or administrative);

(b) Whether the sentence "It is important for treaty negotiators to agree on the scope of the territory where the taxation rules agreed in the treaty should apply", which was currently included in the Manual, should be expanded to better explain the importance of covering the continental shelf and exclusive economic zone in the definition of a Contracting State. The majority of members who spoke on that question agreed that it was an important issue that needed to be identified in the Manual. That led to a more general discussion regarding the approach that should be adopted, when revising the Manual, concerning complex technical issues. It was generally agreed that, while the Manual should not contain details concerning such matters, it should include topics that raised important common issues that needed to be considered by developing countries when negotiating a treaty, so as to encourage those countries to further research those topics. It was also agreed that the application of a tax treaty to the continental shelf and exclusive economic zone was such a topic;

(c) Whether the sentence "The former OECD Article 7 included a provision (paragraph 5) which provided that no profits should be attributed to the permanent establishment in these circumstances [i.e. by reason of the mere purchase by that permanent establishment of goods and merchandise for the enterprise] and this paragraph should be included when the negotiators agree to this approach in relation

[4] See E/C.18/2018/CRP.4. Available at www.un.org/esa/ffd/wp-content/uploads/2018/05/16STM_CRP4_Negotiation.pdf.

to the mere purchase of goods and merchandise" should be deleted so as to avoid suggesting the inclusion of that sentence, which had been deleted from the OECD Model Tax Convention on Income and on Capital and did not appear in the United Nations Model Convention. The only statement on that issue supported the recommendation to delete the sentence in the light of the changes recently made to the OECD and United Nations Model Conventions. The Chair concluded that there was agreement to do so;

(d) Whether the negative views towards most favoured nation provisions that are currently reflected in the Manual (e.g., in the sentence "It is also wise to avoid most favoured nation (MFN) provisions that require the country, in the event that it agrees on a lower rate with a third country, to provide similar treatment to its existing treaty partner, since lower rates with that third country may have been negotiated having regard to the overall balance of benefits provided in that treaty"), should be replaced by a more neutral view. The discussion of the issue revealed that Committee members had different views concerning the usefulness of most favoured nation provisions. Some members stressed that while developing countries were constrained by such provisions, such countries found it difficult to resist their inclusion in tax treaties. Others noted that the provisions often provided a useful solution when agreement was difficult to reach. A few interventions focused on the different types of most favoured nation clauses and on the practical difficulties they raised (e.g., one member stressed that it was important to be clear as to what circumstances would trigger the application of a most favoured nation provision and on how it would be implemented, while another member raised the issue of the interaction of such provisions with commitments under the Multilateral Convention to Implement Tax Treaty Related Measures to Prevent Base Erosion and Profit Shifting). The vast majority of members who spoke on the issue supported the suggestion that the Manual include a more neutral reference to most favoured nation provisions as well a general description of the pros and cons of those provisions and of the different forms they might take;

(e) Whether the short section IV on the improper use of treaties should be kept or whether the comments on the improper use of treaties should appear under article 1 and article 29, as was done in the United Nations Model Convention. All the members who spoke on the issue expressed a preference to keep section IV on the improper use of treaties and to include cross-references to its contents in the parts of the Manual that would explain the provisions of articles 1 and 29 of the United Nations Model Convention. While it was suggested that the section should also cover the types of unilateral actions that a country could adopt in case of perceived abuse of a tax treaty, it was argued that this issue, which relates to what is usually referred to as treaty overrides, seemed to go beyond the scope of the Manual.

60. Ms. Mongkhonvanit concluded the discussion by repeating the invitation to send written comments on the rough draft by 15 June 2018 at the latest. A draft of the revised Manual would then be prepared by the Subcommittee for a first discussion by the Committee at its seventeenth session, from 16 to 19 October 2018.

K. Issues related to the update of the United Nations Model Double Taxation Convention between Developed and Developing Countries

61. Carmel Peters, the Coordinator of the Subcommittee on Updating the United Nations Model Double Taxation Convention between Developed and Developing Countries, first noted that the 2017 update of the United Nations Model Convention would be launched later during the meeting. The new version of the United Nations

Model Convention would replace the 2011 version. She took the opportunity to note the main changes and additions included in the 2017 update:

(a) The changes resulting from action 6 of the Action Plan on Base Erosion and Profit Shifting, including the addition of a general anti-abuse rule (the "principal purpose test"), changes to the preamble and title of the Convention as well as the addition of a limitation-on-benefits rule and of other targeted anti-avoidance provisions, notably in articles 10 and 13;

(b) Changes to the permanent establishment definition, including the provisions of paragraphs 4 and 5 of article 5 (the changes mostly mirror the changes made to the OECD Model Convention as a result of action 7 of the Action Plan on Base Erosion and Profit Shifting);

(c) The addition of a new article on fees for technical services (article 12A), which the previous Committee membership developed;

(d) A number of changes related to the provisions of the United Nations Model Convention dealing with international transport.

62. Ms. Peters then highlighted three areas that could be addressed as part of the work on further updating the United Nations Model Convention and with respect to which the Subcommittee was seeking guidance from the Committee:

(a) Issues left open by the previous Committee membership, including: (i) issues related to the application of the definition of permanent establishment with respect to insurance activities, including the correct treatment of reinsurance; and (ii) a proposal to amend article 13 (5);

(b) Changes to the United Nations Model Convention that could result from the work done by other subcommittees, with a view to ensuring coherence;

(c) Changes previously made to the OECD Model Convention to reflect the evolution of treaty interpretation and practice, taking into account differences between the OECD and United Nations Model Conventions (including the fact that the United Nations Model Convention had kept article 14).

63. The Coordinator also made reference to the productive meeting that the Subcommittee had in the margins of the sixteenth session of the Committee. The next meeting of the Subcommittee was likely to take place in October during the week of the seventeenth session of the Committee, and the Subcommittee expected to have a paper ready for discussion by then.

64. The participants who took the floor supported the Coordinator's proposals concerning the topics that the Subcommittee could address. Some Committee members noted that, during the most recent Subcommittee meeting, it was decided to set up a subgroup on royalty payments. Ms. Peters invited members who wished to join that subgroup to send their names to Rajat Bansal, the Coordinator of that subgroup.

65. There was also a discussion on whether work should be done with a view to providing greater coherence in the interpretation of provisions that were the same in the United Nations and OECD Model Conventions. Some members were of the view that tax certainty required a greater consensus regarding the interpretation of such provisions.

66. The secretariat acknowledged the complexity of the topic and pointed out that the Committee's recent approach to the matter had been that, in instances in which the commentaries on the OECD Model Convention were quoted in the United Nations Model Convention, the specific part of the OECD commentary quoted was agreed with unless a statement was made to the contrary. There might be several reasons for

not quoting the OECD commentaries on some issues; for instance, the relevant commentary might not have been agreed with or had simply not been considered. It could not be assumed that, if a term used in the United Nations Model Convention was the same as one used in the OECD Model Convention, it must be interpreted in the way suggested in the OECD commentary, which might in any case change over time.

67. Other Committee members recognized the need to allow different views to be expressed and to record minority views. It was also noted that, despite the commentaries on the OECD and United Nations Model Conventions, there remained many differences of interpretation among countries.

68. Finally, Ms. Peters officially announced the launch of the 2017 update of the United Nations Model Double Taxation Convention between Developed and Developing Countries. The members of the Committee congratulated the Subcommittee and the secretariat for the work done on the publication.

L. Other Matters

69. José Troya presented a paper on issues related to international tax evasion and avoidance schemes, including the use of shell companies. He noted shortcomings in international efforts to address those issues and suggested that the Committee could do further work in that area, which could include developing guidelines, recommendations, model legislation and risk management tools. In the ensuing discussion, it was noted by many Committee members that significant progress had already been made in that area, in terms of both standard-setting and policy guidance. Reference was made to the work of the Committee itself, as well as to the work of the Global Forum on Transparency and Exchange of Information for Tax Purposes and of the Inclusive Framework on Base Erosion and Profit Shifting. Some Committee members suggested that one priority could be to translate the newly developed standards and relevant guidelines into practical steps that countries could follow, and that capacity-building would be critical to support developing countries in that effort. The Committee did not take any decision with respect to work on the topic. The Committee invited Mr. Troya to prepare an update of his paper, to be considered at its next session.

Chapter IV

Matters calling for action by the Economic and Social Council

Draft decision recommended for adoption by the Council: Venue and dates of and provisional agenda for the seventeenth session of the Committee

70. The Committee of Experts on International Cooperation in Tax Matters recommends that the Economic and Social Council review and adopt the following draft decision:

Draft decision
Venue and dates of and provisional agenda for the seventeenth session of the Committee of Experts on International Cooperation in Tax Matters

The Economic and Social Council:

(a) Decides that the seventeenth session of the Committee of Experts on International Cooperation in Tax Matters will be held in Geneva from 16 to 19 October 2018;

(b) Approves the following provisional agenda for the seventeenth session of the Committee:

1. Opening of the session by the Co-Chairs.
2. Adoption of the agenda and organization of work.
3. Discussion of substantive issues related to international cooperation in tax matters:
   - (a) Procedural issues for the Committee;
   - (b) Report of the Subcommittee on Updating the United Nations Model Double Taxation Convention between Developed and Developing Countries;
   - (c) Other issues:
     - (i) Update of the United Nations Practical Manual on Transfer Pricing for Developing Countries;
     - (ii) Update of the handbook on extractive industries taxation issues for developing countries;
     - (iii) Update of the Manual for the Negotiation of Bilateral Tax Treaties between Developed and Developing Countries;
     - (iv) Treatment of collective investment vehicles;
     - (v) Dispute avoidance and resolution;
     - (vi) Capacity-building;
     - (vii) Environmental tax issues;
     - (viii) Tax consequences of the digitalized economy — issues of relevance for developing countries;

(ix) Taxation of development projects;

(x) Other matters for consideration.

4. Provisional agenda for the eighteenth session of the Committee.

5. Adoption of the report of the Committee on its seventeenth session.

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